IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1540 of 2000
with
SPECIAL CIVIL APPLICATION No 1289 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODKUMAR NAGINDAS POTHIWALA
Versus
DINESH MILLS LTD.

Appearance:
1. Special Civil Application No. 1540 of 2000
MR DIPAK R DAVE for Petitioner
MR KM PATEL for Respondent No. 1

2. Special Civil ApplicationNo 1289 of 2000
MR KM PATEL for Petitioner
MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/03/2001

COMMON ORAL JUDGEMENT

1. These two connected SCAs are proposed to be disposed of by a common judgement. In both the Petitions the award of the Labour Court Vadodara rendered on 27.9.1999 is under challenge. Under this award the Labour Court has ordered after quashing the termination order of the

employee that he may be reinstated in service on his original post with continuity of service and with 25% back wages along with all the benefits available. SCA 1289 of 2000 has been filed by the employer whereas SCA 1540 of 2000 has been filed by the Workman.

2. Arguments of Shri Dipak R Dave and K.M.Patel representing the two sides in the two petitions have been heard and the award of the Labour Court has been examined. Three points were for consideration of the Labour Court. One was whether the Labour Court at Vadodara has jurisdiction or the Labour Court at Bharuch. The second point for consideration was whether Shri Vinodkumar Nagindas Pothiwala was a Workman within the meaning of Section 2(S) of the Industrial Disputes Act 1947 and the third was whether the order of termination of the Workman was valid or invalid.

3. On the first question of jurisdiction, the Labour Court came to the conclusion that the Vadodara Court had jurisdiction to enter upon the reference. On the second point the finding of the Labour Court is that the employee was Workman within the meaning of Section 2(S) of the Industrial Disputes Act 1947. On the third point there is no finding of the Labour Court whether termination order was valid or invalid. Without recording finding on this crucial question, the order of reinstatement could not be passed either with or without backwages or with 25% backwages. The result therefore, is that the award is incomplete and it cannot be sustained.

4. Shri Dipak R Dave, however, tried to contend that this Court under Article 226 of the Constitution of India can, for the first time, examine the validity or otherwise of the termination order. I am, however, unable to accept this contention. This Court, for the first time, will not enter into this inquiry and this exercise has to be undertaken by the Labour Court. This, therefore, necessitates quashing of the award and remand of the matter to the Labour Court Vadodara for fresh consideration.

5. On behalf of the Respondent Shri K.M.Patel contended that the question of jurisdicjtion has not been properly decided by the Labour Court inasmuch as it has not considered the question where the cause of action actually accrued. He further contended that the finding of the Labour court that the employee is a Workman, is also not properly rendered. As such, he requested that the entire award be quashed and set-aside and the entire

matter may be remanded to the Labour Court for fresh consideration and rendering fresh award after hearing the arguments of the two sides as they do not propose to adduce any evidence before the Labour Court any more.

6. In view of the above contentions, both the Petitions are allowed. The impugned award dated 27.9.1999 is hereby quashed and set-aside. The matter is remanded to the Labour Court Vadodara for rendering fresh award after hearing arguments of the two sides on all the three points involved in the case including the claim of back wages. The Labour Court shall give the award within a period of 3 months from the date of production of certified copy of this judgement. The Labour Court shall also hear argument of the employee for his claim for backwages. The parties shall not be granted any adjournment by the Labour Court and the Labour Court shall hear arguments and render award within a period of 3 months as indicated above.

7. The consequence of quashing of the award would be that the order of reinstatement also goes. However, since the award is being set-aside on technical ground, it would not be in the interest of justice to direct the order of reinstatement of the employee also to go. Shri K.M.Patel, however, states that for a period of three months, during which fresh award is expected to be given, the employer is ready to pay salary and allowance to the employee and as he apprehends that the employee may create administative problems hence he may not attend the office but he will be paid salary for a period of 3 months. In view of this statement, it is further directed that during the period, the award is rendered and the proceedings are pending before the Labour Court, for a period of three months and 15 days thereafter, the employee Shri Vinodkumar Nagindas Pothiwala shall be paid every month salary and allowance by M/s Dinesh Mills Limited but shall not attend his duties. In the circumstances of the case, there shall be no order as to cost.

8. Direct service is permitted.

(D.C.Srivastava J)

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